IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

Bail Appl..No. 3856 of 2007()

CRIME NO.401/07 OF KAYAMKULAM POLICE STATION

PETITIONERS/ACCUSED 1 AND 2

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1. ABDUL RAHIMAN @ KOCHUMON,
   S/O.SULAIMAN KUNJU, PUTHANKANDATHIL VEEDU,
   FISH MARKET, KAYAMKULAM.

2. BIJU, S/O.JALALUDHIN,
   PUTHENKANDATHIL, FISH MARKET,
   KAYAMKULAM.

BY ADV. SRI.P.SREEKUMAR
SRI.K.S.MANU (PUNUKKONNOOR)

RESPONDENTS: COMPLAINANT

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1. SUB INSPECTOR OF POLICE,
   KAYAMKULAM POLICE STATION,
   ALAPPUZHA DISTRICT.

2. STATE OF KERALA, REPRESENTED BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY P.P. SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 3856 OF 2007

Dated this the 29th day of June, 2007

ORDER

Application for anticipatory bail. The petitioners are accused in a crime registered under Sec.394 read with Sec.34 of the IPC. The crux of the allegations against the petitioners is that they attacked the de facto complainant on 6/6/07 at about 3.30 p.m. at a spot in the Kayamkulam Market. He was assaulted and an amount of Rs.11,200/- was forcibly removed from his possession. The miscreants allegedly took to their heels. They have not been arrested so far. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations are totally false and incorrect. As a matter of fact, the incident took place in a totally different manner. The de facto complainant was found urinating near a Mosque

and the petitioners had raised objections against such improper conduct on the part of the de facto complainant. This led to an altercation and exchange of words. The de facto complainant happens to be an active worker of a political party which presently is in power. Misutilising the influence which he has with the police, the de facto complainant has now raised allegations which are totally unjustified, false and exaggerated. It is prayed that directions under Sec.438 of the Cr.P.C. may be issued in favour of the petitioners.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the sequence of events, as revealed from the investigation and probabilities, do not at all support the version presently advanced by the petitioners. The alleged incident took place at about 3.30 p.m. An F.I.R. has been registered at 4 p.m. wherein the present allegations are narrated in detail. The learned Public Prosecutor submits that the investigation revels that the incident has been witnessed by the natural witnesses who in all likelihood were present at the scene of the crime. It is significant that they have seen the accused persons running away from the scene of the crime. The petitioners have been absconding from the date of the incident. All these circumstances convincingly suggest and

point to the truth of the allegations of the prosecution. The allegations are serious and grave. The ill-gotten money has got to be recovered. Grant of an anticipatory bail to the petitioners would virtually deny the prosecution of the opportunity of making an attempt to recover the booty and effectively offer grievance redressal to the complainant.

4. Considering the nature of submissions made by the learned counsel for the petitioners, the learned Public Prosecutor was requested to make the Case Diary available for my perusal. The learned Public Prosecutor, after flagging the relevant pages, has placed the Case Diary for my perusal. I have perused the Case Diary.

5. Powers under Sec.438 of the Cr.P.C. are to be invoked sparingly in exceptional cases that too only in aid of justice. Such jurisdiction is certainly not be invoked as a matter of course. An order of anticipatory bail virtually converts what the legislature has prescribed to be a non-bailable offence into a bailable one. Convincing and satisfactory reasons must be shown to exist to resort to such course. Where the powers of the State and its officials to arrest and detain a citizen are about to be misused for mala fide, oblique and objectionable purposes, certainly the extraordinary equitable discretion under Sec.438

of the Cr.P.C. can and ought to be invoked. But, on an anxious perusal of all the relevant inputs, I am not persuaded to agree that this is a fit case where such invocation is necessary or justified. I am of opinion that this is an eminently fit case where the petitioners must be directed to appear before the Investigating Officers or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary and normal course.

6. This application is, in these circumstances, dismissed with the above observations.

(R. BASANT, JUDGE)

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